## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JAMES KIISTER	)
Claimant VS.	) ) ) Docket No. 202,131
SUN GRAPHICS, INC. Respondent	) Docket No. 202,131
AND	
WEST AMERICAN INSURANCE COMPANY Insurance Carrier	<b>\}</b>

## **ORDER**

Respondent appeals from two (2) Preliminary Hearing Orders dated August 10, 1995 and October 3, 1995, wherein Administrative Law Judge Nelsonna Potts Barnes granted claimant medical benefits and temporary total disability benefits as a result of injury arising out of and in the course of claimant's employment with respondent.

## ISSUES

- (1) Whether claimant met with accidental injury on the date alleged;
- (2) Whether claimant's accidental injury arose out of and in the course of his employment;
- (3) Whether claimant is entitled to ongoing medical benefits and temporary total disability benefits; and
- (4) Whether the Administrative Law Judge exceeded her jurisdiction in declining respondent's request for termination of temporary total disability compensation due to the fact the Court's Preliminary Hearing Order of August 10, 1995, was before the Appeals Board with no decision rendered.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds as follows:

The Preliminary Hearing of September 27, 1995, and the resulting Order of October 3, 1995, were consolidated by the agreement of the parties with the Preliminary Hearing of August 9, 1995 and resulting Order of August 10, 1995.

The issues regarding whether claimant suffered accidental injury or whether claimant's accidental injury arose out of and in the course of his employment, are issues enumerated in K.S.A. 44-534a as appealable from preliminary hearings, and thus are properly before the Appeals Board.

The medical evidence supports the finding that claimant, while having a long-term pre-existing back problem, did aggravate his back condition, at least temporarily, while employed with respondent. The medical records placed into evidence at the Preliminary Hearing of August 9, 1995, do support claimant's contentions of aggravation of a pre-existing condition and the Administrative Law Judge's finding that claimant's accidental injury arose out of and in the course of his employment is affirmed by the Appeals Board.

The issues regarding whether claimant is temporarily totally disabled or entitled to additional ongoing medical treatment, are not issues enumerated in K.S.A. 44-534a as appealable from preliminary hearings. K.S.A. 44-534a specifically grants Administrative Law Judges the authority to decide issues regarding medical treatment and temporary total disability compensation. The Administrative Law Judge did not exceed her jurisdiction in granting the benefits to claimant.

In the Order of October 3, 1995, the Administrative Law Judge declined respondent's request to terminate temporary total disability compensation holding that the original Order issued on August 10, 1995, was before the Appeals Board and a decision had yet to be rendered on said opinion.

The Administrative Law Judge appears to deny respondent the right to contest claimant's temporary total disability compensation at a later date, due to an earlier order having not been reviewed by the Appeals Board.

There is no limit under K.S.A. 44-534a as to how many preliminary hearings a party may request. There is also no language contained in the statute which prohibits a party from requesting an alteration in the award of temporary total disability compensation at a time when the earlier order is pending before the Appeals Board. The Administrative Law Judge's refusal to consider respondent's motion based purely upon the appeal of the earlier order being before the Appeals Board is improper. As such, the Appeals Board finds under K.S.A. 44-551, the Administrative Law Judge exceeded her jurisdiction in refusing to consider respondent's request to terminate temporary total disability compensation.

As such, this matter is remanded back to the Administrative Law Judge for consideration of respondent's motion to terminate temporary total disability compensation and for a ruling on said issue.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated August 10, 1995, granting claimant temporary total disability compensation and ongoing medical treatment, is affirmed in all respects.

It is further found by the Appeals Board that the October 3, 1995, Order of Administrative Law Judge Nelsonna Potts Barnes, should be, and is hereby, remanded back to the Administrative Law Judge for a ruling on respondent's motion to terminate temporary total disability compensation.

IT IS SO ORDERED.
Dated this day of November 1995.
BOARD MEMBER
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BOARD MEMBER
BOARD MEMBER

c: Carlton Kennard, Pittsburg, Kansas M. Doug Bell, Coffeyville, Kansas Nelsonna Potts Barnes, Administrative Law Judge Philip S. Harness, Director